

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: PROPOSED AMENDMENTS TO RULE 5,
RULES OF THE SUPREME COURT OF TENNESSEE

No. _____

ORDER

The Court, in order to advance its strategic priority of Access to Justice, proposes to amend Tennessee Supreme Court Rule 5, concerning research assistants, to allow employees of the court system, possessed of a law license and employed as research assistants or law clerks to justices and judges, to perform certain pro bono tasks. The proposed amendment of Rule 5 is attached as Exhibit A to this order.

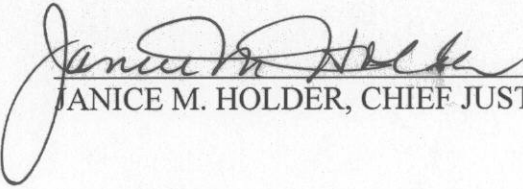
In the interest of providing prompt and fair consideration of the important public policy issues raised by the proposed amendment, the Court hereby solicits written comments from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is April 6, 2009. Written comments should be addressed to:

Mike Catalano, Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

The Clerk shall provide a copy of this order, including the attached Petition and Exhibit, to LexisNexis and to Thomson-West. In addition, this order, including the attached Petition and Exhibit, shall be posted on the Tennessee Supreme Court's website.

It is so ORDERED.

FOR THE COURT:



JANICE M. HOLDER, CHIEF JUSTICE

EXHIBIT A

(Underlining denotes proposed additional language and strikeout denotes language proposed for deletion)

Rule 5. Research assistants. — The employment of Research Assistants (Law Clerks) for the members of the appellate judiciary is governed by Tenn. Code Ann. § 8-23-108 and § 8-23-109. The employment of research assistants also is governed by Tenn. Code Ann. § 16-3-804(b).

Additional qualifications and/or conditions of employment are as follows:

(a) Research assistants shall devote their full time, during regular working hours, to the performance of the official duties assigned to them by the judge or justice whom they serve.

(b) ~~They~~ Research assistants shall not engage in the practice of law during the term of their employment, except as provided in paragraph (c). The term “practice of law” shall mean those services listed in Rule Tenn. Sup. Ct. R. 9, § 20.2 of this Court; provided, however, for the limited purpose of this rule, the term shall not include service as a research assistant.

(c) Notwithstanding the provisions of paragraph (b), a research assistant (“assistant”) may act pro se, may perform routine legal work incident to the management of the personal affairs of the assistant or a member of the assistant’s family, and may provide pro bono legal services in civil matters, so long as such pro se, family, or pro bono legal work does not present an appearance of impropriety, does not take place while on duty or in the assistant’s workplace, and does not interfere with the assistant’s primary responsibility to the judge or justice whom the assistant serves, and further provided that:

(1) in the case of pro se legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings);

(2) in the case of family legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings) and does not involve the entry of an appearance in any court;

(3) in the case of pro bono legal services, such work: (i) is done without compensation; (ii) does not involve the entry of an appearance in any court; (iii) does not involve a matter of public controversy, an issue likely to come before the Assistant’s court, or litigation against federal, state or local government; and (iv) the proposed services are reviewed in advance with the appointing authority to determine whether the proposed services are consistent with the foregoing standards.

(c) (d) Senior law students (those in their final year of law school) may be employed upon a part-time basis, with a commensurate apportionment of compensation.

(d) (e) All full-time research assistants, as a condition of their entry upon their duties, will file with the Administrative Office of the Courts a certificate in the following form:

CERTIFICATE

I, _____, Research Assistant to Judge _____, certify:

a. that I have read and fully understand Rule 5 of the Tennessee Supreme Court;

b. that I will devote my full time, during regular working hours, to the performance of my official duties as Research Assistant;

c. that I will not engage in the practice of law ~~as defined in Rule 9~~, during the term of my employment, except as permitted under Rule 5.

This is the _____ day of _____, 20__.

[Signature]

(f) For the purposes of paragraphs (a) - (c) of this rule, the term "research assistant" shall include any staff attorney employed by an appellate court.